



STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DIVISION OF WATER RESOURCES  
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## Notice of Determination

**Star Community Builders**  
**East Ridge, Hamilton County, TN.**  
**DWR file # NRS 20.179**

May 21, 2021

This notice presents the final determinations of the Tennessee Department of Environment and Conservation, Division of Water Resources, and responds to comments on the Aquatic Resource Alteration Permit NRS 20.179 requested by Star Community Builders LLC for alterations to 2.4 acres of jurisdictional wetlands.

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## Background

Star Community Builders, LLC applied for an Aquatic Resource Alteration Permit and Clean Water Act section 401 certification that would authorize the wetland impacts on July 23, 2020.

The Division issued public notice soliciting comments on the above permit application on March 16, 2021, and announced the scheduling of a public hearing, which was held via video teleconference on April 22, 2021.

## Existing Conditions/Proposed Loss of Resource Values

Following formal evaluation and delineation of onsite jurisdictional waters in May 2019 prior to any land disturbance, grading, or fill placement, the site was determined to contain a total of 5.79 acres of wetlands that ranged in size from 0.004 acre to 3.19 acres. The wetlands were spread among 20 locations. The permit is for the alterations to 2.4 acres of wetlands.

Resource	Impact	Area
W6	Grading/Fill	46,554
W7	Grading/Fill	958
W8	Grading/Fill	469
W9	Grading/Fill	350
W10	Grading/Fill	4,750
W11	Grading/Fill	22,062
W12	Grading/Fill	10,713
W13	Grading/Fill	509
W14	Grading/Fill	9,458
W15	Grading/Fill	267
W16	Grading/Fill	1,142
W17	Grading/Fill	207
W18	Grading/Fill	3,108
W19	Grading/Fill	3,501
W20	Grading/Fill	450
	<b>Total Impact (square feet)</b>	<b>104,498</b>
	<b>Total Impact (acres)</b>	<b>2.40</b>

The compensatory mitigation of Wetlands 10 and 11 (0.62 acre) of ETW will be achieved by the preservation of onsite wetlands at a ratio of 14:1, thus requiring 8.68 acres of preservation. This includes preserving 3.39 acres of Wetlands 1 through 5 and unimpacted portion of Wetland 6 which now contains

the relocated populations of *G. floridana*. In addition, 5.29 acres of ETW wetlands located on the adjoining northern property also owned by the applicant, will be preserved.

To compensate for impacts to the remaining 1.78 acres of onsite wetlands (wetlands 6-9 and wetlands 12-20) not considered to be ETW's, 3.23 acres of the forested and scrub-shrub wetlands located on the adjoining northern property will be preserved and the applicant will additionally purchase 2.56 credits from the Sequatchie Valley Wetland Mitigation Bank near Condra, TN. A 30-foot buffer will be established around northern wetland, bringing the total wetland preservation there to 13.45 acres and total preserved conservation area to 17.81 acres.

### **Alternatives Analysis and Selection of Least Impactful Practicable Alternative**

The stated goal of the project is the construction of a multi-use complex to support and enhance a recently constructed soccer stadium. The multi-use complex will include two hotels, two apartment buildings, a clubhouse, a mixed-use retail center, convention center, parking garage, office complex, and supporting infrastructure.

The permittee has provided the following discussion of alternatives that were evaluated:

*This alternatives analysis outlines several alternatives to the proposed project (both on and off-site) as well as a "no-build" alternative. The purpose of outlining these project alternatives is to demonstrate that the plan is the most practical, best use of resources, and minimizes impacts to wetlands and streams to the greatest extent possible, while accomplishing the project purpose. As part of this alternative evaluation, the following "Practicability/ Reasonability Screening Selection Criteria" were applied to each alternative to confirm whether or not the particular alternative and/or on-site configuration was practicable.*

- *Capable of being done considering cost (is the cost reasonable considering scope and type of project considering total cost, funding source, profit margin, etc.).*
- *Capable of being done considering logistics (must consider existing infrastructure, traffic patterns, and topography).*
- *Property can be reasonably obtained (must consider availability, ability to condemn, liens, etc.).*
- *Property can be reasonably expanded (must consider ability to acquire adjacent lands for expansion).*
- *Meets overall project purpose.*

*A summary of the alternative analysis and a description of each alternative evaluated as part of this permit application package is provided in the following:*

### **No Action Alternative**

*A "no-action" alternative must be considered, and complete avoidance of onsite streams and wetlands was the first alternative considered for this project. Avoidance of the jurisdictional streams onsite was achieved. Due to the location of the jurisdictional wetlands and the size of the proposed complex, it was quickly determined that complete avoidance of wetland impacts was not feasible.*

*The applicant proposes to construct a \$125 million, mixed-use complex anchored by a first-call, 5,500 seat, USL League One professional soccer stadium. The project also includes the development of two*

*hotels, a convention center, apartment and condominium units, a mixed-use center with retail and restaurant components, and an office complex. The investment is composed of private funds and represents the biggest such investment in East Ridge's history. Approximately 1,200 new jobs will be created, and additional annual tax revenue is estimated to be \$6 million to \$7 million. If the "no-action" alternative is chosen, then the Chattanooga area will lack a USL professional soccer stadium, no new jobs*

*will be created, and no additional tax revenue will be realized. The area will also miss out on additional tourism dollars, which could affect the overall Chattanooga economy. Because the "no-action" alternative*

*and complete avoidance of impacts prohibits construction of the complex, this alternative was determined to be unreasonable and not practicable.*

#### *Off-Site Alternatives*

*As part of this alternative evaluation, the following "Practicability/ Reasonability Screening Selection Criteria" were applied to each of six alternatives to confirm whether or not the particular alternative and/or on-site configuration was practicable:*

- 1) Contiguous developable footprint (minimum of 40+ acres depending on geometric layout);*
- 2) Prominent visibility of the soccer stadium to Interstate traffic;*
- 3) Zoning of or likelihood of rezoning to commercial or mixed-use designation;*
- 4) Ease of vehicular access to Interstate and major arterial roadways;*
- 5) Reasonable access to off-site soccer practice facilities;*
- 6) Reasonable access to utility infrastructure (electric, communications, water, gas, sewer);*
- 7) Reasonable access to or ability to develop nature trails, greenways, and/or boardwalk system(s);*
- 8) Local or state financial incentives to offset investment and/or development costs;*
- 9) Timeline to develop the property; and/or*
- 10) Cost to develop the property.*

*Listed below are all six sites evaluated in conjunction with the project and provides the acreage and cost of the sites, and the positive and negative characteristics each site possessed, allowing a direct comparison*

*of the potential project locations. Sites listed for sale and known to be available for purchase were considered as part of the alternative analysis.*

#### *Offsite Alternatives*

##### ***1. Concord Golf Club (1207 Radmoor Road, Chattanooga) 67.48 acres***

##### *Positives*

- Tract size supports development*
- Contiguous property*
- Geometric layout*
- Generally flat site*
- Visibility to I-75*
- Property borders South Chickamauga Creek*
- Reasonable proximity to practice fields at Camp Jordan (East Ridge Parks & Rec)*

##### *Negatives*

- Rezoning challenges due to surrounding R1 zoning*
- Traffic impacts to North Concord Road and cost of roadway widening and improvements*
- 1.17 miles to Interstate access*

- 90% of property in regulated floodway and/or below 100-year flood elevation
- Premium cost to develop in Chattanooga (Land Development Office (LDO) requirements, stormwater fees, property taxes)
- No financial incentives.

## **2. Southern Wood Piedmont**

(403 W. 33<sup>rd</sup> Street, Chattanooga) 155.3 acres

### *Positives*

- Tract size supports development
- Low per-acre cost of land acquisition
- Generally flat site
- Compatible zoning
- Proximity to public-use greenway

### *Negatives*

- Infrastructure upgrade costs (widen 33rd and railroad bridge)
- Adverse traffic impacts to Alton Boulevard
- 1.22 miles to nearest Interstate
- No Interstate visibility
- Extensive contamination of existing soils resulting in extended development timeline, costs and Liability
- Site is split by Chattanooga Creek (not contiguous)
- 60% of site is in regulated floodway and/or below 100-year flood elevation
- Premium cost to develop in Chattanooga (LDO requirements, stormwater fees, property taxes)
- Distance to practice fields at Camp Jordan.

## **3. Desai Property**

(529 Fawley Road, East Ridge) 25.81 acres

### *Positives*

- Proximity to practice facilities at Camp Jordan
- Relatively flat site
- Proximity to US-41 and I-75

### *Negatives*

- Tract too small to accommodate development
- No Interstate visibility
- 70% of property in regulated floodway and 95% of property below 100-year flood elevation
- Cost of roadway widening and improvements to Fawley Road
- No available financial incentives.

## **4. Lukin Property (Interstate 75, Chattanooga) 60.5 acres**

### *Positives*

- Tract size supports development
- Proximity to practice facilities at Camp Jordan
- Interstate visibility
- Relatively flat site
- Contiguous property
- Geometric layout

### *Negatives*

- *Tract is cut off from roadway access by other properties*
- *90% of tract is in regulated floodway and below 100-year flood elevation*
- *Premium cost to develop in Chattanooga (LDO requirements, stormwater fees, property taxes)*
- *No financial incentives*

**5. LKQ of Tennessee Property (Workman Road, Chattanooga) 33.15 acres**

*Positives*

- *Cost of land acquisition*
- *Compatible zoning*
- *Generally flat site*

*Negatives*

- *Tract too small to accommodate development*
- *No Interstate visibility*
- *2.91 miles to Interstate access*
- *100% of property in regulated floodway and/or below 100-year flood elevation*
- *Cost of roadway widening and improvements to secondary street widening and improvements*
- *Premium cost to develop in Chattanooga (LDO requirements, stormwater fees, property taxes)*
- *No available financial incentives*

**6. Interstate 75, East Ridge & Chattanooga (Chosen Alternative) 61.35 + 38.5 = 99.85 acres**

*Positives*

- *Tract size supports development*
- *Proximity to practice fields at Camp Jordan*
- *Visibility to I-75*
- *Contiguous 60+ acres for development and contiguous 38 acres for future preservation and nature trails*
- *Geometric layout*
- *0.69-mile to Interstate access*
- *Generally flat site*
- *Compatible zoning on majority of property*
- *Close proximity to South Chickamauga Creek Greenway and opportunity to extend greenway through property*
- *Developable property within Border Region Act District*
- *(financial incentives)*
- *City to pay for access road improvements*

*Negatives*

- *100% of property is below 100-year flood elevation*
- *30% of property is within regulated floodway*
- *Cost per acre of property is high in relation to other properties that were evaluated*

*Applicant's Preferred Site*

*The permittee's preferred alternative is the 61.35 -acre site located off of Interstate 75 in East Ridge, Tennessee. This site is large enough to support the proposed development with generally flat, easily developable topography; is close to the practice soccer fields at Camp Jordan; has good visibility and access to and from the Interstate; and contains enough land to support development but also has an additional 38.5 adjoining acres for added nature trails, preservation, and a future*

*greenway connector; is located within an area of available financial incentives; and the City has offered to pay for access road improvements at this location.*

*There are only minor negative attributes for this site, including that about one-quarter to one-third of the northern portion of the property is located within the floodway and that the cost per acre is higher than other properties. A flood study is underway, and the permittee plans to mitigate for potential floodway impacts as needed. The positive aspects of the site outweigh the higher cost per acre.*

Based on the available information the Division has made a determination that the permittee has successfully demonstrated that the activities represent the least impactful feasible alternative that will accomplish the project goal

The Division has determined that the permittee's preferred alternative, with conditions, represents the practicable alternative that would achieve the project objective and have the least adverse impact on resource values.

### **Antidegradation**

In accordance with the Tennessee Antidegradation Statement (Rule 0400-40-03-.06), the Division has made a determination that the activities will result in de minimis degradation to water quality of Exceptional Tennessee Waters ( wetlands 6 and 11) because the permittee will to provide in-system mitigation to offset any appreciable lost water resource value.

In accordance with the Tennessee Antidegradation Statement (Rule 0400-40-03-.06), the Division has made a determination that the activities will result in greater than *de minimis* degradation of waters with available parameters (wetlands 7-10 and wetlands 12-20) Any appreciable permanent loss of resource value associated with the impacts is to be offset by sufficient mitigation to result in no overall net loss of resource value. Pursuant to Antidegradation Statement, in waters with available parameters for habitat, an activity that would cause degradation of habitat above the level of *de minimis* will only be authorized if permittee has demonstrated to the Department that there are no practicable alternatives to prevent or lessen degradation associated with the activity and the degradation is necessary to accommodate important economic or social development in the area and will not violate the water quality criteria for uses existing in the receiving waters.

For more information please reference Tennessee's Antidegradation Statement which is found in Chapter 0400-40-03 of the Rules of the Tennessee Department of Environment and Conservation.

### **Response to Comments**

The Division received several comments by email. Due to the number of similar comments, we have summarized and paraphrased the comments below. We believe we have captured all the substantive matters and have provided responses to those comments. It is important to note that the Division's authority comes from the *Tennessee Water Quality Control Act of 1977* and the federal *Clean Water Act*. The Division's authority is therefore limited only to matters that affect water quality. All comments relative to water quality were considered in making this final determination.

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During the public participation process, the Division received comments that address a variety of public interest matters. These include impacts to the wetlands, compensatory wetland mitigation, flooding, listed species and other important matters that citizens depend on government to address. However, the Division cannot address some of those concerns, simply because its authority is limited to water quality considerations.



*Comments Concerning The Clean Water Act:*

Many commentors reference the Clean Water Act and no net loss of wetlands

***Responses to Comments Concerning The Clean Water Act:***

The permit was evaluated and issued under The Rules of the Tennessee Department of Environment and Conservation, Division of Water Resources, Chapter 0400-4—07 Aquatic Resource Alteration (ARAP Rules).

These Rules require that if impacts to a stream or wetland will result in an appreciable permanent loss of resource values, mitigation as set forth in paragraph (7) of Rule 0400-40-07.04 must be provided to ensure no overall net loss of resource values.

<https://publications.tnsosfiles.com/rules/0400/0400-40/0400-40-07.20190911.pdf>

***Comments Concerning the 100 acre forested wetland***

Numerous comments refer to the site as containing and /or consisting of a 100-acre forested wetland. The property associated with the permit is only 61.3 acres in total. In the early 1950's approximately 10 feet of fill was placed on the south area of approximately 40 acres of the project site. The site has remained undeveloped woodland comprised of deciduous hardwoods and pine with numerous ATV-dirt roads traversing the property; access to the site was historically unrestricted from the northwest off North Mack Smith Road and from several entry points along the western and southern property boundaries.

Following formal evaluation and delineation of onsite jurisdictional waters in May 2019 prior to any land disturbance, grading, or fill placement, the site was determined to contain a total of 5.79 acres of wetlands that ranged in size from 0.004 acre to 3.19 acres. The wetlands were spread among 20 locations. Of the 20 wetlands onsite, only 10 contained a plant community dominated by mature trees, meeting the definition of a forested wetland. Jurisdictional waters of the United States, including wetlands, are defined by 33 CFR Part 328.3 and are protected by Section 404 of the Clean Water Act (33 USC 1344), which is administered by the US Army Corps of Engineers (USACE). The TDEC-DWR has jurisdiction over waters of the state. The wetland delineation was confirmed by USACE and the TDEC-DWR representatives during a site visit on July 15, 2019. Following completion of a jurisdictional water's assessment, a 30-foot-wide buffer was established around the stream and wetland features using a row of silt fencing followed by a row of high-visibility construction fencing. Clearing and grubbing activities commenced in upland areas of the site, with the exception of the northern portion where no work is proposed.

The quality of each wetland was evaluated by qualified professionals in accordance with the Tennessee Rapid Assessment Methodology (TRAM). The scores ranged from 38 to 83. Low resource values range from 0-44, moderate 45-74 and above 74 is high quality to exceptional. Available mapping resources reviewed in conjunction with the formal wetland assessment included the U.S. Geologic Survey (USGS) 7.5-minute quadrangle topographic map, U.S. Fish and Wildlife Service (USFWS) National Wetland Inventory (NWI) map, the U.S. Department of Agriculture Natural Resources Conservation Service (USDA NRCS) soil survey map (no hydric

soils indicated) , and aerial imagery back to 2009 obtained from Google Earth. Other than Spring Creek along the northern site boundary, none of these resources identify onsite streams or wetlands.

### **Comments Concerning the wetland compensatory mitigation**

Commentors expressed that the wetland mitigation plan of the purchase of credits in the Sequatchie Wetland Bank (SVWMB) and the preservation of onsite wetlands will result in a net loss of wetlands (under the Clean Water Act)

### **Responses to Concerns Regarding wetland compensatory wetland mitigation**

Several comments raised concern over the purchase of wetland mitigation credits from the SVWMB located in Marion County (not Sequatchie County as several reviewers stated) as a means of compensatory mitigation. The purchase of credits from the SVWMB was determined in accordance with Federal Rule 40 CFR Part 230, also referred to as the Federal Compensatory Mitigation Rule. The rule establishes a hierarchy of compensatory mitigation options with established mitigation bank credit purchase first, followed by in-lieu-fee credit purchase, and lastly permittee-responsible mitigation, which includes creation, restoration, or preservation. The SVWMB was the only wetland mitigation bank within the primary service area of the project site and therefore was the only compensatory mitigation option to satisfy U.S. Army Corps of Engineers requirements.

Based on the presence of a population of the Florida hedge hyssop, a state- threatened plant, within wetlands 10 and 11, the TDEC-DWR the wetlands were classified as Exceptional Tennessee Wetlands, requiring mitigation within the same eight-digit Hydrologic Unit Code as the project site. The site was not conducive to creation of wetlands due to inadequate soils. The unimpacted wetlands were already moderate to high quality and not candidates for enhancement.

The preservation of wetlands is an acceptable form of compensatory wetland mitigation as listed under the Aquatic Resource Alteration Permit Rules, Chapter 0400-40-07.04 (c) (2) Mitigation of Wetlands. The development of nearby properties such as the TDOT I-75 interchange and rest area, Top Golf , and other developments have resulted in several acres of wetland impact. The onsite preservation of these wetlands will ensure that the remaining wetlands continue to perform important resource values and not result in an overall loss of resource values. Preservation is to prevent future development or impacts. The relocation of the plants to onsite wetlands to be preserved, and thus elevating it to exceptional status, further strengthens the role that preservation has in this project.

In light of the comments received regarding wetland mitigation, the applicant has increased the buffer around the wetland to be preserved north of Spring Creek. A 30-foot buffer will be established around northern wetland, bringing the total wetland preservation there to 13.45 acres and total preserved conservation area to 17.81 acres. The feasibility of onsite wetland creation was evaluated in association with the proposed water feature to be constructed in the northern portion of the site. Because this feature will serve for many years as a stormwater control feature

during construction, the establishment of a mitigation wetland in association with this feature was not feasible given the timing of implementation.

The applicant intends to establish trails around the wetlands to be preserved and work with regional partners to facilitate and establish educational opportunities. It is the applicant's intent to establish herbaceous wetland fringe habitat around the pond once construction is complete and the pond is converted to a permanent water feature. Furthermore, the applicant intends to incorporate green infrastructure features, such as vegetated bioswales, into the stormwater control plan where practicable. However, mitigation credit is not being sought for these future actions.

*Comments Concerning Presence of state-protected or rare plants and animals / general wildlife (...including the ovate leaved arrowhead (Sagittaria platyphylla), lanceleaf wakerobin (Trillium lancifolium), whiteleaf leather flower (Clematis glaucophylla), sharp scaled mannagrass (Glyceria acutifolia), gibbous panic grass (Sacciolepis striata) and waterpod (Hydrolea quadrivalis). In addition, the loss of this wetland area also lessens habitat and food access for Chickamauga Crayfish (Cambarus extraneus), King Rail (Rallus elegans), Least Bittern (Ixobrychus exilis) and other nesting waterfowl along this Eastern flyway.)*

### **Responses to Concerns on the presence of state listed species**

The majority of the wetlands are small, disconnected, and of low quality and do not provide suitable habitat for the species of concern. A protected species review of the property was conducted within the areas to be disturbed. The results did not identify rare plants other than the Florida hedge hyssop. The project will have no impact on the Chickamauga crayfish as no streams will be impacted by the project, or on the king rail, least bittern, or other nesting waterfowl as no ponds or open water wetlands will be impacted by this project. The wetlands to be preserved, however, include areas of open water, deciduous forest, scrub-shrub, and herbaceous habitats. The presence of such a variety of habitats combined with the interconnectivity of these wetlands to Spring Creek provide the best hope for long-term wildlife and protection of rare species.

### **Responses to Other Matters**

The Division's authority is limited to matters affecting water quality and within the authority of the Tennessee Water Quality Control Act of 1977. In this regard, the matters below are not within the Division's authority cannot be addressed by the Division in this permit. However, the permittee offers the following responses:

*Comments Concerning Introduction of impervious surfaces resulting from development*

### **Responses to Concerns of impervious surfaces**

Of the 61.3-acre total site area, approximately 30 acres is proposed to be covered with impervious surface, i.e., concrete, asphalt, or roof. The site is and will continue to be designed in accordance with local, state, and federal regulations as it relates to both construction stormwater runoff and post-construction stormwater management, including the detention of stormwater associated with increased impervious surface that will arise from development activities. The number of parking spaces proposed in the development is based on established regulatory zoning and code requirements.

*Comment concerning Public recreational opportunities*

The permittee acknowledges the concept of placing future public recreational areas into a conservation easement and that an elevated walkway would be appropriate in areas conducive to flooding. Several commenters mentioned the wetlands were planned to be researched by local students; the preservation of the wetland will ensure that such activities remain possible.

*Comment concerning that the Development will increase flooding of surrounding properties*

The permit regulates aquatic resource alteration not flooding. However. The permittee has provided the following response:

“All development activities are outside of the FEMA regulated floodway and development activities within the 100-year floodplain area have/will be designed and constructed in accordance with regulatory requirements. Notwithstanding, it is the position of the permittee and the engineer of record that the installation of permanent drainage controls along the perimeter of the southern property line will improve drainage within the Lansdell Park neighborhood, not impede it.”